

ANN BAVENDER*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
ANDREW S. KERSTING
EUGENE M. LAWSON, JR.
SUSAN A. MARSHALL*
HARRY C. MARTIN
RAYMOND J. QUIANZON
LEONARD R. RAISH
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
HOWARD M. WEISS
ZHAO XIAOHUA*

* NOT ADMITTED IN VIRGINIA

47

DOCKET FILE COPY ORIGINAL
FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW
11th FLOOR, 1300 NORTH 17th STREET
ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYN
U. S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
MITCHELL LAZARUS
EDWARD S. O'NEILL*
WRITER'S DIRECT

RECEIVED

MAR 27 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

812-0474

kersting@fhh-telcomlaw.com

March 27, 2000

BY HAND DELIVERY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, S.W.
Washington, DC 20554

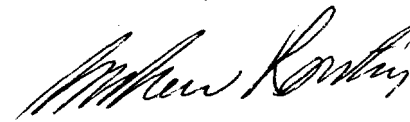
Re: Petition for Rule Making
Lowry City, Missouri

Dear Ms. Salas:

Transmitted herewith on behalf of Bott Communications, Inc. are an original and four copies of its "Opposition to Motion to Dismiss Petition for Rule Making" filed in connection with the above-referenced rulemaking petition.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
Counsel for Bott Communications, Inc.

Enclosure

cc (w/ encl.): Certificate of Service (by hand & first-class mail)

No. of Copies rec'd 014
List A B C D E
nnb

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

In the Matter of)

MAR 27 2000

)
)
Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations
(Lowry City, Missouri))

MM Docket No. _____
RM- _____

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch

OPPOSITION TO
MOTION TO DISMISS PETITION FOR RULE MAKING

Bott Communications, Inc. ("Bott"), by its attorneys, hereby submits its opposition to the "Motion to Dismiss Petition for Rule Making," filed March 15, 2000 ("Motion"), by The Clair Group ("Clair"), Lake Area Educational Broadcasting Foundation, and Bick Broadcasting Co. (collectively, "Movants"). In support of this opposition, the following is stated:

On October 8, 1999, the Commission released a *Notice of Proposed Rule Making*, DA 99-2101 (released October 8, 1999), in MM Docket No. 99-299 (Osceola and Sedalia, Missouri) ("*NPRM*"), proposing the substitution of Channel 262A for Channel 222A at Osceola, Missouri, and the substitution of Channel 222A for Channel 221A at Sedalia, Missouri. The *NPRM* noted that the proposed channel substitutions would provide expanded service at Osceola and Sedalia, Missouri, and would allow Station KMFC(FM), Centralia, Missouri, to operate with six kilowatts effective radiated power. *Id.* at 2.

On November 29, 1999, Bott filed a timely counterproposal proposing the allotment of Channel 262A at Wheatland, Missouri, which would provide Wheatland with its first aural

transmission service. In response to Bott's counterproposal, Movants filed an "Opposition to Counterproposal" on February 11, 2000, proposing a "technical solution" to the conflict regarding the proposed allotment of Channel 262A, noting that Channel 262A could be allotted to Wheatland and Channel 285A could be allotted to Osceola, as Clair had originally proposed in its rulemaking petition.¹ Movants' Opposition to Counterproposal, p. 2. The Movants also argued that Wheatland does not qualify as a community for allotment purposes. *Id.* at 2-3.

On March 2, 2000, Bott filed its subject Petition for Rule Making requesting the allotment of Channel 285A at Lowry City, Missouri, as that community's first aural transmission service. In response, Movants filed their subject Motion requesting the dismissal of Bott's Petition.

In their Motion, Movants note that alternate channels for communities set forth in a Notice of Proposed Rule Making and/or a counterproposal may be advanced in reply comments, and will be protected from later-filed rulemaking petitions. Motion, p. 2, citing *Pinewood, South Carolina*, 5 FCC Rcd 7609 (1990). Movants also note that allotment proposals which introduce additional communities (*e.g.*, Lowry City) must be advanced on or before the initial comment deadline in a conflicting allotment proceeding. *Id.*, citing *Corpus Christi and Three Rivers, Texas*, 11 FCC Rcd 517 (Pol. & Rules Div. 1995).

Bott recognizes that, in light of the full Commission's decision in *Pinewood*, in order to have its proposal to allot Channel 285A at Lowry City considered, it was required to submit its proposal

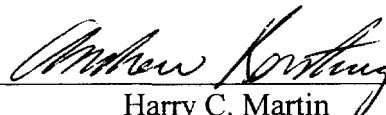
¹ In its Petition for Rule Making, Clair initially proposed that Channel 285A be substituted for Channel 222A at Osceola, and that Channel 222A be substituted for Channel 221A at Sedalia. Lake Area Educational Broadcasting Foundation ("Lake") subsequently filed an amendment to Clair's rulemaking petition proposing, instead, that Channel 262A be substituted for Channel 222A at Osceola. Lake noted that it supports the substitution of Channel 262A for Channel 222A at Osceola, "but withdraws its support for the previously-filed request for Station KSVJ [Osceola] to operate on Channel 285A." *NPRM* at 2.

by the November 29, 1999, comment deadline in MM Docket No. 99-299 (Osceola and Sedalia, Missouri). Nevertheless, although the timing of the filing of Bott's Petition requires it to await the outcome of the Osceola/Sedalia allotment proceeding, Bott respectfully submits that no useful purpose would be served by the immediate dismissal of its pending Petition. Indeed, Bott respectfully submits that it would promote administrative convenience and efficiency for the Commission to hold Bott's Petition in abeyance pending the outcome of the Osceola/Sedalia allotment proceeding. In the event the Commission elects to allot Channel 285A at Osceola, Bott's Petition seeking the allotment of Channel 285A at Lowry City should be dismissed. If, however, Channel 285A is not allotted to Osceola, then Bott's Petition should remain pending and be the subject of a future Notice of Proposed Rule Making.

WHEREFORE, in light of the foregoing, Bott Communications, Inc. respectfully requests that its Petition for Rule Making, filed March 2, 2000, be held in abeyance pending the issuance of a *Report and Order* in MM Docket No. 99-299.

Respectfully submitted,

BOTT COMMUNICATIONS, INC.

By: 
Harry C. Martin
Andrew S. Kersting

Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street, 11th Floor
Arlington, Virginia 22209
(703) 812-0400

Its Counsel

March 27, 2000

c:\ask...bott\rm\lowrycty.opp.wpd

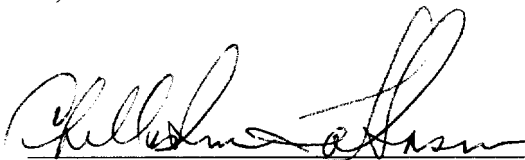
CERTIFICATE OF SERVICE

I, Chellestine Johnson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 27th day of March, 2000, copies of the foregoing "Opposition to Motion to Dismiss Petition for Rule Making" were hand delivered mailed first-class, postage pre-paid, to the following:

John A. Karousos, Chief*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
The Portals II, Room 3-A266
445 Twelfth Street, S.W.
Washington, DC 20554

Ms. Kathleen Scheuerle*
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
The Portals II, Room 3-A247
445 Twelfth Street, S.W.
Washington, DC 20554

Lauren L. Flick, Esquire
JoEllen Masters, Esquire
Fisher Wayland Cooper Leader
& Zaragoza, L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20006
(Counsel for The Clair Group, Lake Area
Educational Broadcasting Foundation, and
Bick Broadcasting Co.)


Chellestine Johnson

* Hand Delivered